Remarks
submitted March 2007

[001] This is in response to the Office Action dated 13 December 2006.

[002] Amendments

Please enter the amendments to claims 1 and 10, as attached.

[003] Allowable subject matter

Claims 7-16 were indicated as allowable. These claims are now presented in independent form.

[004] Rejection of claim 1 under 35.USC.112, 2nd §

In the O/A, the PTO refers to clause [16] of our claim 1 as containing the words: of such form and robustness and is so mounted that . . . liquid entering the tray-chamber substantially cannot form pools

In fact, those words do not appear in clause [16] of claim 1. **We request that the '112 rejection be vacated**, on the grounds that the rejection as stated contains a highly material mistake.

[005] Rejection of claim 1 under 35.USC.112, 2nd §

We note that those words do appear in clause [16] of the patent application as it was originally filed, 20 January 2004. However, in the amended claims, as filed 27 September 2006, those words appear in clause [18]. We are left to wonder what this mistake might mean. Perhaps the PTO examiner might have made a simple mistake over the clause numbering -- but that does seem to be an odd coincidence. The other possibility is that the PTO might have examined the wrong claims. Either way, the applicant is left to guess the PTO's intent. The PTO should not leave the applicant guessing -- to the extent that the present rejection is not properly supported, and whereby, if any '112 rejection of claim 1 were to be continued, it **should not be made final**.

[006] Rejection of claim 1 under 35.USC.112, 2nd §

We now address the rejection as if it were based on those words as the appear in clause [18] of the amended claims as filed 27 September 2006 (which is now clause [19] in the amended claims as attached).

As mentioned, these words do appear in clause [16] of the as-filed claims. In all the numerous communications from the PTO on this case, there has been no previous mention of a '112 §2 rejection arising from these words. In our view, clause [18] of claim 1 is perfectly in keeping with good claiming practice, for the reasons as explained below. This was also, apparently, the PTO position, up until this latest O/A. Without any explanations to why the PTO has changed its mind on this point, the rejection is **not properly supported**, and should be withdrawn for that reason.

[007] Rejection of claim 1 under 35.USC.112, 2nd §

It is well settled that, in the case of an apparatus claim, the claim must not be rejected under §2 unless there exists an example of an apparatus about which the person skilled in the art (i.e the examiner, who is standing in for the notional skilled person) cannot determine, with a reasonable degree of certainty, whether that apparatus does or does not fall within the scope of the claim.

It is also well settled that the recitation of a physical capability of an apparatus serves perfectly well to define the structure of the apparatus. If an apparatus A1 is so structured that it does have the recited capability, as a structure, then that apparatus A1 is covered by the claim. If not, not. That being so, the terms of §2 of '112 are met.

In this case, the PTO has not tabled any such example, in the O/A. We cannot ourselves envisage any such example ourselves.

We put the PTO to the following: either **withdraw** the '112 rejection of claim 1, or **table an example** of an apparatus regarding which the skilled person would be unable to determine, with the required reasonable degree of certainty, whether that apparatus does or does not fall within the scope of claim 1.

[008] Rejection of claim 1 under 35.USC.103

We can see no reason why the present new '103 rejection, based on Collis, could not have been made in one of the many previous communications from the PTO on this case. We point out that this piecemeal introduction of new rejections is not in the best traditions of the PTO.

[009] Rejection of claim 1 under 35.USC.103

The O/A makes the following statements (1st parag on page 3):
[The device depicted in Fig 1 of Collis is] for holding and transporting poultry . .
[The cage as depicted in Fig.1 of Collis] is sturdy, standalone and physically capable of being picked up as a unit and being placed on a truck.

The PTO appears to have made a mistake here, in its assessment as to just what is disclosed in Collis. With respect, there is no disclosure of the Collis Fig.1 device being physically and structurally capable/suitable to be picked up and put on a truck.

Looking at lines 14-17 of col 1 of Collis, we learn that The young fowl, especially, are gathered from various sections and shipped in great numbers to the "feeders", so-called, who place them in coops . . . And the rest of the Collis patent is concerned with the design of the coops, i.e the coops in which the fowl are fed and fattened. These coops are located at the establishment of the "feeder", and remain there. The Collis coops rest on the ground, and are static.

There is nothing at all to indicate that Collis designed his coops to be structurally capable/suitable to be picked up and put on a truck. The skilled person would presume that Collis's coops do not have that capability. Collis clearly designed his coops simply to stand on the ground, during operation, at the feeding station.

The skilled persons know that feeding coops are not robust enough to survive the rigors of being picked up, e.g by a forklift truck, to be put on a road-truck, and to be transported on the truck over farm-tracks and public roads. The skilled persons know that transport cages, with which claim 1 is concerned, are much more robust than the type of cage depicted in Fig.1 of Collis (and even then, as explained in the specification, all too often road-transport cages still need constant attention and maintenance, if they are to remain serviceable). Our own drawings Figs 1-6 exemplify the level of structural robustness the skilled persons inevitably associate with the label "physically suitable for containing and transporting live poultry on a road-transport truck" (clause [4] of claim 1).

Furthermore, the skilled person knows that a coop designed for an on-farm feeding operation inevitably includes a feeding trough, and inevitably includes provision for dealing with excrement from the birds. Both of those features are present, as the skilled person would expect, in the Collis design. The skilled persons also know that cages to be used for road-transport of poultry birds have no need for neither of those things.

Thus, the skilled person must conclude that the cage depicted in Fig.1 of Collis does not, as a matter of its physical structure, fall within the scope of the words of clauses [4],[7] of claim 1.

Yet it is a **cornerstone** of the PTO's rejection of claim 1 that Collis discloses a device for transporting poultry.

[0010] Rejection of claim 1 under 35.USC.103

The O/A also makes the following statement (1st parag on page 3):
The floor panel [of the cage as depicted in Fig.1 of Collis] is defined as the combination of bottom portion 10 of the lattice wire mesh, and solid tray 15.

It is, of course, required that the PTO, during examination, construe the terms of a claim as broadly as is reasonably possible. However, with respect, we feel that, here, the PTO is being **un**reasonably broad. We have now added the new clause [17] into claim 1, which makes it clear that our floor-panel is the thing that the birds stand on. But even without that addition, it is our view that the skilled persons would construe the term floor-panel in that way. In the context of a cage for transporting live poultry, having a floor-panel, of course the floor-panel is the thing the birds stand on.

Collis explains: The two sheets, thus arranged, constitute pans or instrumentalities for catching the droppings of the fowl confined in the overlying cage. Thus, clearly, Collis himself did not regard his droppings-collection-sheets 15 as being components of, or included within, his bird-containing chamber. We feel it is UNreasonable for our term "floor-panel" to be construed as including a droppings-collection-sheet located underneath the panel on which the birds actually place their feet.

For the above reason, **Collis's metal droppings-collection-sheet 15 cannot be regarded as the floor-panel**, or as a component of the floor-panel, as that term is defined in claim 1.

[0011] Rejection of claim 1 under 35.USC.103

The PTO alleges that the skilled person would find it obvious to replace Collis's metal droppings-collection-sheet 15 with a droppings-collection-sheet made of plastic. We do not comment on that allegation. Collis's droppings-collection-sheet 15 does not fall within the scope of the expression "floor-panel", as that expression is defined in clauses [10], [16], [17], [18], [19] of our (amended) claim 1. Therefore, the question whether the skilled person would or would not find it obvious to

replace Collis's metal sheet 15 with a plastic sheet is **irrelevant, because Collis's metal sheet 15 is not a floor-panel.**

The more relevant question might be whether the skilled person would find it obvious to replace Collis's wire mesh floor 10 (Figs 3,4,6) with a plastic floor-panel -- but the PTO is (quite rightly) not alleging that such a replacement as that would be obvious.

[0012] Rejection of claim 1 under 35.USC.103

We do not accept that the Leshin precedent, mentioned in the O/A, has the effect of rendering a change of material always obvious, in any component of every machine -- which, as we understand it, is the lesson the PTO has drawn from that case. Rather, each case has to be reviewed on its merits. The correct question to be asked is: would the notional skilled person have found it obvious, by following the teachings of the prior art, as available on the day the invention was made, to substitute material X in place of the as-disclosed material Y?

Often, the ***material*** of this or that component of a machine serves as the designer's starting point. The designer's task is then to so arrange the machine as to make the most cost-effective use of the properties of that already-given material. Thus, if the material of one of the components were to be changed, often a compete re-design would have to be carried out, of the whole machine. The Leshin precedent makes it clear that blanket rejections of claims, for the reason simply that the claim involves a change of material, is NOT permitted. When rejecting a claim based on a change of material, therefore, the PTO is obliged to **supply a reasoned explanation** as to why the skilled person would, in the particular case, be led to make the change of material.

The PTO has not done that here. Indeed, we also note the following words from the Collis patent (lines 109-111 of page 2): **From the foregoing description, it will be seen that I have provided a structure constructed almost entirely of metal . . .** This is a classic example of a ***teaching away*** from a proposed change -- which would seem to require some very careful reasoning on the part of the PTO.

In any event, of course, the question of the obviousness or otherwise of a change to the material of Collis's metal droppings-collection sheet 15 has no relevance, because the sheet 15 does not meet the definition of a floor-panel as recited in claim 1.

[0013] Rejection of claim 1 under 35.USC.103

The O/A makes the statement that **. . the swinging door is well-known in the art of animal cages, and is an art-recognized equivalent to the sliding door disclosed by Collis.**

The O/A does not mention one single prior art reference, however, which corroborates the above statement. Sheaffer's pivoting door 230 (Fig 15) is not the door for a poultry cage, through which the birds pass for entry into and exit from the cage. Rather, the Sheaffer door 230 is a door that, when opened, allows access to a ventilation plenum, the door being opened for the purpose of cleaning the plenum. We cannot, with respect, see how Sheaffer corroborates or demonstrates the PTO proposition that pivoting is equivalent to sliding when it come to the doors of poultry transport cages through which the birds enter or leave the cage chambers.

A key requirement of a transport cage, as opposed to a feeding coop (Collis shows a feeding coop), is the requirement that the operators must be able to lift the cage down from the road-truck, and

transfer the birds onto the production line of the processing factory -- preferably all in one motion, and in any event very simply and quickly. The applicant is the one who has recognised this can be difficult to arrange with sliding doors, but it is very easy with pivoting doors.

For example, it is easy for the designer to arrange for a *pivoting* door to open automatically. In particular, for example, a pivoting door can/might be arranged to simply burst open when the cage is tipped and the birds fall against the door (see claim 17).

If the alleged **equivalence** between swinging doors and sliding doors really is **well-known** in the context of road-transport cages for poultry birds, as the O/A suggests, it should be a simple matter for the **PTO to demonstrate** that equivalence.

It is up to the PTO to demonstrate that swinging doors are equivalent to sliding doors, in the particular context of chamber-access doors to poultry transport cages. Such demonstration is not achieved, with respect, by a simple unsupported assertion.

[0014] Rejection of claim 1 under 35.USC.103

For the above reasons, we feel claim 1, as amended, is allowable over the cited art.

[0015] Rejection of claim 4 under 35.USC.103

Again, Collis's metal droppings-collection sheet 15 is not a floor-panel, as that term is defined in amended claim 1, and thus in claim 4. Whether Collis's sheet 15 might or might not support pooling is therefore irrelevant.

[0016] Rejection of claims 17,20,21 under 35.USC.103

Again, the door 230 in Sheaffer is a door to a ventilation plenum. It is not an access door through which the animals pass upon entering or leaving the animal cages. Thus, Sheaffer cannot serve as any sort of teaching reference, as regards whether the door 230 might or might not be opened by animals leaning against it.

[0017] Rejection of claim 2 under 35.USC.103

Again, Collis's metal droppings-collection sheet 15 is not a floor-panel, as that term is defined in amended claim 1, and thus in claim 2. Whether the flat sheet 15 could be changed into a shape that does not support pooling is therefore irrelevant.

[0018] Rejection of claim 3 under 35.USC.103

Claim 3 defines the case where a **plastic** floor-panel of a tray-chamber in a poultry-transport cage has been provided with drainage slits. We cannot, with respect, see how a floor made of metal wires, no matter how close together, could be regarded as a relevant teaching reference of the notion of providing narrow drainage slits in a plastic floor-panel.

[0019] Rejection of claim 19 under 35.USC.103

As the skilled persons will understand from our specification, we intend our road-transport cages to be mainly used for **transporting** poultry from farm to processing plant. The skilled designers understand that road-transport is a very demanding environment, requiring much greater robustness in the cages than is required in, for example, on-farm static feeding cages. The designer knows, of course, that there is little point in providing fork slots on a flimsy cage. It is the fact that our cage, as defined in claim 1, is already very strong and robust that makes our claim 19 addition of fork slots worthwhile. We cannot, with respect, see how Giordano could be said to provide any teaching of this notion.

[0020] For the above reasons, we believe this patent application is now in order for allowance, and we look forward to being notified to that effect.

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Enclo: claim amendments (8 pages)